

STATE OF ILLINOIS

ORIGINAL



ILLINOIS COMMERCE COMMISSION
TRANSPORTATION DIVISION / RAIL SAFETY SECTION

Michael E. Stead

Rail Safety Program Administrator

March 7, 2006

Dean Jackson
Chief Administrative Law Judge
Review and Examination
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701

RE: T05-0005

Judge Jackson:

The attached Order is respectfully submitted for your approval and submittal to the Commission for the April 5, 2006 Bench Session. The Order was drafted in coordination with counsel for the City of Sandwich, and then submitted to the Illinois Department of Transportation and the BNSF Railway for their review. Counsel representing the Illinois Department of Transportation and the BNSF Railway both provided comments that have been addressed and incorporated into the Order (e-mail reviews also attached).

If you have any questions, or require additional information, please contact me at (217) 557-1285 or mstead@icc.illinois.gov, or Brian Vercruysse, Railroad Safety Specialist, at (630) 424-8750 or bvercruy@icc.illinois.gov.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael E. Stead".

Michael E. Stead
Rail Safety Program Administrator

cc: All Parties of Record

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DOCKETED

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BV-DJ

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

City of Sandwich, DeKalb County, Illinois,
Petitioner,

V.

BNSF Railway Company,
State of Illinois, Department of Transportation and
Sandwich Township, DeKalb County, Illinois,

Respondents.

Petition for an Order of the Illinois Commerce Commission
authorizing the establishment of a new highway-rail grade
crossing at Fairwind Boulevard with the track of BNSF Railway
Company, located immediately north of US Route 34 in the City
of Sandwich, DeKalb County, Illinois, directing thereon the
installation of automatic protection devices and construction of
the crossing proper and dividing the cost among the parties, and
directing the closure of the existing Gletty Road grade crossing
of the BNSF Railway Company's track immediately north of US
Route 34 in the City of Sandwich, and Sandwich Township,
DeKalb County, Illinois.

T05-0005

ORDER

By Order of the Commission:

On February 1, 2005, the City of Sandwich ("Petitioner" or "City") filed with the Illinois Commerce Commission ("Commission") a Petition in this proceeding seeking authorization to construct the new Fairwind Boulevard highway-rail grade crossing of the BNSF Railway's tracks ("BNSF" or "Company") in the City of Sandwich. In conjunction with this, and as part of an overall plan to improve traffic flow through the City of Sandwich, the Petitioner also requested permission to close the existing Gletty Road grade crossing identified as AAR/DOT #079 604B, railroad milepost 57.03 - BNSF Mendota Subdivision. The Petitioner named as respondents the Company, Sandwich Township, and the State of Illinois acting through the Secretary of the Illinois Department of Transportation ("Department").

Pursuant to notice, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at the Commission's Springfield office on March 29, 2005. The Petitioners and Respondent Department appeared by counsel. Mark Leemon, Manager Public Projects appeared on behalf of the BNSF. Brian Vercruysse, Rail Safety Specialist of the Commission's Transportation Division, appeared on behalf of Commission Staff.

The Petitioner presented testimony of Thomas Horak, City Engineer, Tom Thomas, Mayor of the City, and Andrew Savirah, of the civil engineering consulting firm, Smith Engineering Consultants, Inc. Mark Leemon, representing the BNSF, also provided testimony. The matter was continued to April 26, 2005, with the BNSF represented by counsel and further testimony provided by Messrs Savirah, Thomas, and Leemon. The matter was further continued to June 30, 2005, so that the parties could submit proposals for the division of cost.

On June 28, 2005, counsel for the Department requested that the case not be marked heard and taken, indicating that the Department programmed a new project to *upgrade the circuitry for warning devices at the Main and Eddy Streets of the BNSF's track in the City*. Because the City's proposed Fairwind Boulevard crossing would already necessitate modifications at these two crossings, additional time was requested so that the Department, the BNSF, and the City could determine the best way to proceed in order to maximize efficiency, potential savings, and protect the interests of both projects. On July 13, 2005, the Department submitted its proposal for the allocation of costs describing how the coordination of the two projects could prevent duplicate work, and allow for the re-use of material from the Gletty Road crossing. On November 29, 2005, the record was marked "Heard and Taken."

Fairwind Boulevard is a proposed collector route on the west side of the City. As outlined in the City's Comprehensive Plan, the new 1.5 mile long street would provide a safer, more efficient travel route for existing traffic and also account for anticipated growth and development in the area. During the hearing process the City explained that the proposed northern terminus of Fairwind Boulevard would initially be at Lisbon Street, which is located east of the Sandwich Fairgrounds; future expansion of Fairwind Boulevard north of Lisbon street is also anticipated. As an interim improvement, the roadway would traverse south to US Route 34, intersecting the BNSF's tracks approximately 1800 feet east of the existing Gletty Road crossing. Ultimately, as land acquisition efforts continue south of US Route 34, the roadway would be extended further south and west to intersect Gletty Road.

Currently Gletty Road is under the jurisdiction of Sandwich Township, which has not objected to the Petitioner's requests. The Gletty Road grade crossing is currently equipped with automatic flashing light signals and gates (controlled by constant warning time circuitry) that are interconnected with traffic signals at the intersection of US Route 34 and Gletty Road. First initiated in 1995 as part of a Department project to address safety issues at the US 34/Gletty Road intersection, the traffic signals and railroad warning devices were installed in 2003. The City had requested that the Department coordinate and delay its 2003 project for the benefit of the proposed Fairwind Boulevard work. However, due to safety concerns and because the City did not provide a schedule for the Fairwind Boulevard project, the Department advanced the project.

With closure of the Gletty Road crossing, which is used by approximately 2250 vehicles per day, the new Fairwind Boulevard crossing, with a forecasted traffic volume of 12,990 vehicles per day in 2015, would be constructed at an improved crossing angle, and would also be equipped with automatic flashing light signals and gates (controlled by constant warning time circuitry) that are interconnected with new traffic

signals at the intersection of US Route 34 and Fairwind Boulevard. Given the traffic volumes that will remain at the intersection of Gletty Road and US Route 34, the traffic signal operation would be continued as a three-legged intersection until a time when the southern leg of the Fairwind Boulevard at US Route 34 is open to traffic. Early coordination efforts focused on trying to re-use the railroad equipment from Gletty Road at the new crossing. However, as BNSF developed preliminary plans and cost estimates, it was determined that re-use of existing railroad equipment would not be economical or advantageous, as the new Fairwind Boulevard crossing layout was dissimilar.

With the interim improvement, Fairwind Boulevard would consist of a four lane cross section, with a barrier median on the approaches to the new grade crossing to discourage driving around the gates. Additional roadway width will also be provided so that a future through lane may be provided. This will insure that the crossing surface and railroad warning devices would be installed in their final location. The City would also widen US Route 34 to provide left turn lanes and accommodate the new intersection. Consistent with the Gletty Road crossing, two tracks with approximately 25 trains per day (19 freight trains at maximum speed of 55 mph, and the 6 Amtrak passenger trains at a maximum speed of 79 mph) will cross Fairwind Boulevard. To accommodate the new crossing, the northernmost track will need to be raised to provide a uniform profile.

Given the proximity of the Fairwind Boulevard grade crossing to the intersection with US Route 34, the railroad warning devices and the traffic signals must be interconnected. A study was completed indicating that 34 seconds of minimum simultaneous preemption time is necessary to accommodate the proposed traffic signal sequence.

The location of the new Fairwind Boulevard crossing will also impact four (4) other crossings in the City of Sandwich, due to their close proximity and the need to overlap and integrate the crossing circuitry. Subsequent to the March 29, 2005, and April 26, 2005 hearings, the Department proposed to upgrade the control circuitry at Main Street and Eddy Street in a separate project in its Fiscal Year 2007 program (begins July 1, 2006). Coordinating this with the City's project would be beneficial in terms of construction efficiency, cost savings, and the potential re-use of the Gletty Road warning devices at the Main Street crossing (which was agreed to by the BNSF). If approved, the City anticipates a 30 month construction schedule from the date of an Order. This would also account for a sanitary sewer project in 2006, which will be within the proposed Fairwind Boulevard right-of-way. Due to the sewer size and depth, a time allowance for settlement would be necessary to constructing Fairwind Boulevard.

The Commission, having considered the evidence of record, is of the opinion and finds that:

- (1) the City of Sandwich, DeKalb County, Illinois is a political subdivision organized and existing under and by virtue of the laws of the State of Illinois;

- (2) the BNSF Railway Company is engaged in the transportation of persons and/or property by rail in the State of Illinois and as such, is a rail carrier as defined by the Illinois Commercial Transportation Law, as amended;
- (3) the Commission has jurisdiction of the subject matter and parties herein;
- (4) the recitals of fact set forth in the prefatory portion of this order are supported by evidence of record and are hereby adopted as findings of fact;
- (5) the Gletty Road grade crossing should be closed, abolished and barricaded in conjunction with the construction of Fairwind Boulevard and the installation of the new Fairwind Boulevard grade crossing. The Gletty Road grade crossing should be permanently closed when either the Fairwind Boulevard crossing is cutover or when it is open to traffic. The BNSF should identify its right-of-way limits, and the City should install and maintain Type III barricades at the BNSF/Gletty Road right-of-way lines. Once the Gletty Road grade crossing is closed and barricaded, the BNSF should remove the existing warning devices and crossing surface;
- (6) the BNSF should, with reimbursement from the City and Grade Crossing Protection Fund, construct the new Fairwind Boulevard grade crossing, including: raise the northern track to provide a uniform profile; install a full-depth rubber or pre-cast concrete panel crossing surface; and install automatic flashing light signals and gates controlled by constant warning time circuitry, with a remote monitoring unit;
- (7) the BNSF should also provide a minimum of 34 seconds simultaneous preemption time to allow for the interconnection between the traffic signals at the Fairwind Boulevard/US Route 34 intersection and the crossing warning devices at the Fairwind Boulevard grade crossing ;
- (8) the City should provide traffic signal plans for the Fairwind Boulevard/US Route 34 intersection to Commission Staff and the Department for review and approval prior to construction. This should include provisions for the addition of the southern leg of Fairwind Boulevard. The City should also submit for the Department's review and approval, the traffic signal modifications to the existing Gletty Road at US Route 34 intersection;
- (9) the City and Department should coordinate their projects using their best effort to every extent possible, to maximize the potential benefits and cost savings of the Eddy and Main Street circuitry upgrade and the US Route 34 improvement at Fairwind Boulevard, with the understanding that circumstances beyond the control of either party may prevent this;
- (10) the total estimated cost for the project is \$2,862,914. A division of costs for the project are noted in the Cost Division Table below. Based upon the ability to re-use the warning equipment from the Gletty Road crossing, \$70,000 from the Grade Crossing Protection Fund (GCPF) should be allocated with this Order:

- COST DIVISION TABLE -

Work Item	EST. COST	CITY	GCPF	BNSF	DEPARTMENT
US Route 34 Roadway Work (Within State R.O.W.)	\$1,240,930	100% \$1,240,930	\$0	\$0	\$0
Construct Fairwind Boulevard (Lisbon to north line of BNSF right-of-way)	\$641,065 ¹	100% \$641,065	\$0	\$0	\$0
Contingencies for Highway and Street Improvements	\$288,299	100% \$288,299	\$0	\$0	\$0
Design and Construction Engineering for Highway and Street.	\$94,100	100% \$94,100	\$0	\$0	\$0
Raise North Track at New Fairwind Blvd. Crossing	\$20,921	100% \$20,921	\$0	\$0	\$0
Install Automatic Flashing Light Signals and Gates Controlled by Constant Warning Time Circuitry at the Fairwind Boulevard crossing, with 34 seconds Minimum Simultaneous Preemption time	\$462,149 ²	85% \$392,149	15% \$70,000 ³	\$0 ⁴	\$0
Install Crossing Surface at the new Fairwind Boulevard Crossing	\$121,550	100% \$121,450	\$0	\$0 ⁵	\$0
Remove Existing Gletty Road Crossing (Surface/Warning Devices)	Estimate Not Required	\$0	\$0	100%	\$0
Totals	\$2,862,914	\$2,792,914⁶	\$70,000	\$0	\$0

Notes:

1. Includes removal of the highway approaches at the existing Gletty Road grade crossing.
2. If coordinated with the Department's project at Main Street and Eddy Street, the BNSF estimate is reduced by approximately \$17,000 (to \$444,878). Further cost savings would be realized by the Department in its project.
3. GCPF amount not to exceed \$70,000; any installation costs above the estimated amount of \$462,149 will be divided between the GCPF and the City in the same percentages noted above, upon submittal and review of evidence to support the additional cost and subject to approval by the Commission.
4. The BNSF is responsible for 100% of all future operating and maintenance costs associated with the new warning devices.
5. The BNSF is responsible for 100% of all future maintenance costs associated with the surfaces at the Fairwind Boulevard crossing.
6. The amounts allocated to the City of Sandwich in the above Cost Division Table shall not prevent the City from seeking funds from the State, including the Department; nor prevent the State, including the Department, from granting funds or transferring maintenance responsibilities for the work or costs. However, for the purpose of this Order, the City is ultimately responsible for its share of the cost as outlined above absent any granting of funds or the transfer of maintenance responsibilities.

- (11) The parties are authorized to proceed immediately in performing the work herein required of each of them and should complete these improvements within thirty (30) months;
- (12) Any person making a Request for Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the scheduled deadline. An Administrative Law Judge will consider and decide the request.
- (13) Any person requesting a extension of time that exceeds thirty (30) days must file a Petition For Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.
- (14) Requests for an Extension of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.
- (15) The Commission or its Administrative Law Judge reserves the right to deny Petitions for Supplemental Orders and Requests for Extension of Time, if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.
- (16) 625 ILCS 5/18c-1701 and 1704 require each "person", as defined by Section 18c-1104, to comply with every regulation or order of the Commission. These sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the state not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense. While the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions;

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the City of Sandwich, DeKalb County, BNSF Railway Company, and the Illinois Department of Transportation are hereby required and directed to proceed with the construction of Fairwind Boulevard and the installation of the new Fairwind Boulevard crossing in the City of Sandwich, DeKalb County, Illinois in accordance with Findings (6) through (10).

IT IS FURTHER ORDERED that the City of Sandwich, DeKalb County, and the BNSF Railway Company are hereby required and directed to close, abolish and barricade the existing Gletty Road grade crossing in conjunction with construction of Fairwind Boulevard and the new Fairwind Boulevard highway-rail grade crossing in the City of Sandwich, DeKalb County, Illinois, as outlined in Finding (5) above.

IT IS FURTHER ORDERED that the BNSF Railway Company shall file Form 3 of 92 Ill. Adm. Code 1535 of this Commission showing details of the automatic warning device and circuitry relocation and installation herein required and shall receive approval thereof by X-Resolution before commencing the work of relocation.

IT IS FURTHER ORDERED that all bills for work authorized for reimbursement from the Grade Crossing Protection Fund shall be submitted to the Fiscal Control Unit, Bureau of Local Roads and Streets, Illinois Department of Transportation, 2300 South Dirksen Parkway, Springfield, Illinois 62764. The Department shall send a copy of all invoices to the Director of Processing and Information, Transportation Bureau of the Commission. All bills shall be submitted no later than twelve (12) months from the completion date specified in the Commission Order approving this Agreement. The final bill for expenditures from each party shall be clearly marked "Final Bill". The Department shall not obligate any assistance from the Grade Crossing Protection Fund for the cost of proposed improvements described in this Agreement without prior approval by the Commission. The Commission shall, at the end of the 12th month from the completion date specified in the Commission Order approving this Agreement or any Supplemental Order(s) issued for this project, notify the Department to de-obligate all residual funds accountable for this project. Notification may be by regular mail, electronic mail, fax, or phone.

IT IS FURTHER ORDERED that the City of Sandwich and the BNSF Railway Company shall at six (6) month intervals from the date of this Order until the project has been completed, submit written reports to the Director of Processing, Transportation Bureau of the Commission stating the progress that each has made toward completion of the work herein required. For the City of Sandwich, this shall include the progress made towards the expansion of Fairwind Boulevard south of US Route 34. If the project is behind schedule, the report must include a brief explanation of the reason(s) for the delay. Each progress report shall include the Commission Order number, the Order date, the project completion date as noted in the Order, type of improvement, and project manager information (name, title, mailing address, telephone number, and facsimile number) of the employee responsible for the management of the project.

IT IS FURTHER ORDERED that the City of Sandwich and the BNSF Railway Company, be and are hereby required and directed to submit a written notice, to the Director of Processing and Information, Transportation Bureau of the Commission, of the date the work herein required of it has been completed. Said notice shall be submitted within five (5) days after said completion date.

IT IS FURTHER ORDERED that the BNSF Railway Company shall within five (5) days of the completion of the work herein, file National Inventory Update Report Forms with the Commission's Director of Processing, Transportation Division, as notices of said completion.

IT IS FURTHER ORDERED that, subject to Section 18c-2201 and 18c-2206 of the Law, this is a final decision subject to the Administrative Review Law.

By Order of the Commission this 5th day of April 2006.

Chairman

From: Wysoglad Firm [wysogladfirm@wysoglad.com]
Sent: Monday, February 27, 2006 1:56 PM
To: Vercruysse, Brian
Cc: bensontm@dot.il.gov; bzpaul@aol.com; Mark Leemon
Subject: City of Sandwich v. BNSF - Proposed Order - T05-0005
Dear Mr. Vercruysse:

Please be advised that I have had an opportunity to review the draft order prepared by you and Mr. Bernie Paul concerning the above captioned matter. As you know, I was not present during the first half of the public hearings which was conducted in March, 2005. As a result, I am unaware of any testimony that may have been presented at that time. In any case, based on my review of the proposed order I do question the recitation of fact found in the third page of the proposed order, specifically the third full paragraph on p. 3. I do not believe the information contained in the third full paragraph on p. 3 is in fact supported by the record. Instead, I believe the information reflected in this paragraph may have been obtained subsequent to the close of evidence in the case. However, the information contained in the third full paragraph on p. 3 does not appear offensive to BNSF's interests.

Additionally, I have some concern with the language of item no. 5 on p. 4 of the proposed order dealing with the timing of the closure of the Gletty Road at grade crossing. I am specifically referring to the sentence: "The Gletty Road grade crossing should be closed when either the Fairwind Boulevard crossing is cut over or when it is open to traffic." It is my current understanding that the Gletty Road at grade crossing may need to be closed for up to two weeks in order to do the signal cut over to the Fairwind Boulevard Crossing location and therefore, prior to the opening of the Fairwind Boulevard at grade crossing. With that understanding I would suggest that item no. 5 on p. 4 of the proposed order be revised to read as follows: "The Gletty Road grade crossing should be permanently closed when either the Fairwind Boulevard crossing is cut over or when it is open to traffic."

As noted in your email of February 23, 2006, BNSF is not actively supporting the above captioned petition and therefore cannot agree to the submission of the proposed order as an "agreed order". However, if the Illinois Commerce Commission Administrative Law Judge has determined to enter an order granting the petition, you may represent that BNSF has reviewed the proposed order and has provided comments, as set forth above.

Very truly yours,
Michael L. Sazdanoff
MLS/ret

From: Benson, Thomas M [BENSONTM@dot.il.gov]
Sent: Tuesday, January 24, 2006 3:12 PM
To: Vercruysse, Brian
Subject: RE: T05-0005 City of Sandwich v. BNSF Order
Brian,

So far I have received the following comments regarding this proposed order:

The order does not address the existing traffic signal at Gletty Road once the crossing is closed. Given the turning volumes at the intersection of Gletty Rd and US 34, the signal operation should be continued as a 3-legged intersection until a time when the southern leg of Fairwind Boulevard at US 34 is open to traffic. The City should submit the modifications to the signal operation from existing to the proposed "T" intersection to the Department for review and approval.

The second point concerns future extension of Fairwind Blvd south of US 34. For safe and efficient traffic operation, Fairwind Blvd at US 34 should be a 4-legged intersection which would eliminate the need for signals at Gletty Road. However, the order does not emphasize the future south extension of Fairwind Blvd. On page 2, at the end of the third paragraph it states, "Ultimately as land acquisition efforts continue south of US 34, the roadway would be extended further southerly and westerly to intersect Gletty Road." May be the Petitioner should be given a time frame to report progress on this matter.

If I come up with anything else I will let you know.

Tom

Thomas M. Benson
Assistant Chief Counsel
Illinois Department of Transportation
2300 South Dirksen Parkway Room 311
Springfield, Illinois 62764
(217) 782-0696
(309) 269-7005(cell)

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From: Vercruysse, Brian [mailto:bvercruy@icc.illinois.gov]
Sent: Tuesday, January 17, 2006 3:05 PM
To: wysogladfirm@wysoglad.com; Benson, Thomas M
Cc: Harpring, Jeff L; Leemon, Mark S; BZPAUL@aol.com